

CLAIM REJECTIONS UNDER 35 U.S.C. § 103(a)

Claim 2 was rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 975,457 issued to Ransome in view of U.S. Patent No. 4,539,765 issued to Reece.

The rejection of claim 2 is respectfully traversed on the basis that Ransome with the teachings of Reece does not teach, disclose or even suggest Applicant's device for filling an open trench as recited in Applicant's independent claim 1 and thus, claim 2 which depends therefrom.

As noted above, Applicant's inventive concept, as recited in claim 1, resides in a device for filling an open trench that has a means in the frame for temporarily leveling the dirt that is moved into and over a trench.

In contrast, there is no teaching or suggestion in Ransome that teaches, discloses, or even suggests a device having a means in a frame for temporarily leveling the dirt moved into and over the trench. The Examiner has suggested that the division plates (16) in Ransome act as the means in the frame for temporarily leveling the dirt moved into and over the trench. However, Ransome does not teach, disclose or even suggest the division plates acting to level the dirt moved into and out of the trench. In Ransome, the division plates do not act to temporarily level the dirt moved into and over the trench, as recited in Applicant's claim 1, but rather the division plates extend upward above the grade line and receive filling earth between them.

Reece does not supply the deficiency of Ransome. Reece teaches a

device mounted to a forecarriage and towed so as to backfill a trench. There is no teaching in Reece of a device that has a means for temporarily leveling dirt moved into and over a trench.

As the Examiner is aware, the prior art must suggest the desirability of the claimed invention. Providing the skid mounted device for filling trenches in Ransome with the teaching that the device may be towed in Reece would not provide the means for temporarily leveling dirt moved into and over a trench. Clearly, claim 1 and thus, claim 2 which depends therefrom would not be obvious with respect to such a combination.

Ransome, therefore cannot be used as a basis either alone, or in combination with Reece to establish prima facie obviousness over the present claim. Therefore, it is respectfully submitted that Ransome in view of Reece does not teach, disclose, or even suggest Applicant's inventive concept of claim 1 and thus, claim2 which depends therefrom.

Claims 7 and 9 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 975,457 issued to Ransome in view of U.S. Patent No. 6,520,717 issued to Otto et al.

The rejection of claims 7 and 9 is respectfully traversed on the basis that Ransome with the teachings of Otto et al. does not teach, disclose or even suggest Applicant's device for filling an open trench as recited in Applicant's independent claim 1 and thus, claims 7 and 9 which depend therefrom.

As noted above, Applicant's inventive concept, as recited in claim 1, resides in a device for filling an open trench that has a means in the frame for temporarily leveling the dirt that is moved into and over a trench. There is no teaching or suggestion in Ransome that teaches, discloses, or even suggests a device having a means in a frame for temporarily leveling the dirt moved into and over the trench.

Otto et al. does not supply the deficiency of Ransome. Otto et al. teaches a plurality of roller members, such as tire assemblies, towed behind a vehicle for compacting paving material. However, as discussed above, the Otto et al. reference does not supply the deficiency to the Ransome reference as to claim 1 and thus, claims 7 and 9 which depend therefrom, i.e. Ransome does not teach a device that has a means for temporarily leveling dirt moved into and over a trench. Thus, Ransome cannot be used as a basis, either alone or in combination with Otto et al. to establish a prima facie case of obviousness over claims 1, 7 and 9 which depend therefrom.

Claim 8 was rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 975,457 issued to Ransome in view of U.S. Patent No. 6,520,717 issued to Otto et al. and further in view of U.S. Patent No. 4,019,825 issued to Berrange.

As discussed above, Ransome does not teach, disclose, or even suggest a device for filling an open trench with the dirt previously removed from the trench lying alongside the trench having a means in the frame for temporarily

leveling the dirt moved into and over the trench as recited in claim 1. As discussed above, Otto et al. does not supply the deficiency of the Ransome reference.

Further, Berrange is provided by the Examiner and discloses a soil compactor having an air spring. However, Berrange does not supply the deficiency of the Ransome reference, i.e., Ransome does not teach a means for temporarily leveling the dirt moved into and over the trench. Thus, Ransome cannot be used as a basis, either alone or in combination with Otto et al. nor Berrange to establish a prima facie case of obviousness over claims 1 and 8 which depend therefrom.

As discussed above, claim 1 is believed to be patentable over Ransome. It is respectfully submitted that claims 2, 7, 8, and 9 are patentable over the prior art as applied to claim 1.

Applicant respectfully submits that the combination of the Ransome and Reece, Ransome and Otto, and Ransome, Otto, and Berrange references does not render the inventive concept recited in the claims obvious within the meaning of 35 U.S.C. § 103(a). Applicant respectfully requests reconsideration and withdrawal of the rejection of claims over this combination of references and further submits that the claims are in condition of allowance.

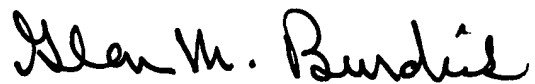
OTHER REFERENCES

Patents to Lee (1,384,617), Spindler (3,157,139), Wyatt (3,471,953), Couch (3,797,582), Vander Lely et al., Shepherd (5,114,269), Palm et al. (5,526,590), Coutarel et al. (5,659,983), Gillespie (5,845,717), Peterson (6,273,637) and Philpott (6,607,330) cited as pertinent art, have been reviewed and considered. It has been determined that such patents do not teach Applicant's invention of a device for filling an open trench with the dirt previously removed from the trench lying alongside the trench having a means in the frame for temporarily leveling the dirt moved into and over the trench as recited in claim 1 and thus claims 2-9 which depend therefrom.

CONCLUSION

The foregoing is meant to be a full and complete response to the Office Action mailed February 25, 2005. In view of the above, Applicant respectfully suggests that the claims are now in a condition for allowance and request issuance of a Notice of Allowance thereof. In the event that any issues may still be outstanding, the Examiner is invited to contact the Applicant's undersigned attorney so that the outstanding issues may be efficiently dispatched.

Respectfully submitted,

A handwritten signature in black ink that reads "Glen M. Burdick". The signature is written in a cursive style with a horizontal line underneath.

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